

REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

Status of the Claims

In the present Amendment, claim 23 has been amended. No new matter has been added.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 112, Second Paragraph

The Examiner has maintained the rejection of claim 23 under 35 U.S.C. § 112, second paragraph for asserted lack of definiteness. Applicants respectfully traverse and note that this rejection is rendered moot since “substantially” has been deleted from the claim. Withdrawal of this rejection is respectfully requested.

Issues under 35 U.S.C. § 102(b) and § 103(a)

Claim 23 stands rejected under 35 U.S.C. § 102(b) for anticipation, or in the alternative under § 103(a) as being unpatentable, in view of WO 2000/0050395 (the Office Action appears to incorrectly refer to 2000/0005395). Applicants respectfully traverse.

Reconsideration is respectfully requested since claim 23 no longer recites “substantially”. Thus, the X-ray diffraction data in Figure 3 of the pending claim is different from any cited pattern and polymorph/compound of the WO ‘395 reference. Also, Figure 3 corresponds to Example 1C (paragraph [0008]) in the present specification, wherein Example 1C incorporates ethanol and isopropyl alcohol (paragraphs [0080]-[0082]). In contrast, as stated in the Office Action, the Examiner states that WO ‘395 uses the solvents of ethanol and n-hexane. Accordingly, withdrawal of this rejection is respectfully requested.

Issues of Obviousness-Type Double Patenting

Claim 23 stands rejected for obviousness-type double patenting in view of claims 1-3, 8-11 and 13-20 of U.S. Patent No. 6,469,043. Reconsideration is respectfully requested since claim 23 no longer recites “substantially”. Thus, the X-ray diffraction data in Figure 3 is different from any cited pattern and polymorph/compound of the ‘043 patent. Withdrawal of this rejection is respectfully requested.

Information Disclosure Statement

Applicants note that an Information Disclosure Statement is being concurrently filed with this Amendment. A returned, initialed copy of the SB/08 form is respectfully requested.

Conclusion

Applicants have addressed all outstanding issues and respectfully request a Notice of Allowability.

Application No. 10/571,279

Docket No.: 1056-0133PUS1

Art Unit 1626


Reply to Office Action of July 9, 2009

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez, Reg. No. 48,501, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: September 2, 2009

Respectfully submitted,

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